

**IN THE UNITED STATES DISTRICT COURT  
THE MIDDLE DISTRICT OF TENNESSEE  
NORTHEASTERN DIVISION**

**Jack L. Sisk and Elizabeth M. Sisk,** )  
Plaintiffs, ) Case No. 1:10-cv-0006  
v. ) ) Judge Haynes  
**Hi-Tech America Development (HAD) III** )  
**Corporation, et al.** )  
**Defendants.** )

**DENIAL OF ENTRY OF DEFAULT**

Pending is Plaintiffs' Motion for Default Judgment (Docket Entry No. 19) against Defendant Ronald Konitzer. The Clerk will construe the motion as being made pursuant to FRCP 55(a), as no default judgment may be granted pursuant to FRCP 55(b) until default has been entered pursuant to FRCP 55(a). Ramada Franchise Systems, Inc. v. Baroda Enterprises, LLC 220 F.R.D. 303 (N.D. Ohio 2004).

The Clerk has reviewed the Complaint (Docket Entry No. 1), the returned Summons (Docket Entry No. 11) and the Motion for Default Judgment (Docket Entry No. 19). The Clerk notes two issues with Plaintiffs' filing. First, Plaintiffs' served Defendant Konitzer outside of the United States but have not documented how this service is effective under Federal Rule of Civil Procedure 4(f). Second, Plaintiffs have not included an affidavit of military service as required by the Servicemembers Civil Relief Act of 2003 (50 App. U.S.C. 501 et seq.). The Act requires that affidavits be submitted that "state whether or not the Defendant is in military service and **showing facts necessary to support the affidavit**" (emphasis added). Information on the military status of an individual can be obtained at the Department of Defense website at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. That website provides an on-line search utility

(SSN required) as well as a help button link that provides information on where requests for information can be sent (no SSN required) to determine whether a particular individual is on active duty in the military. Alternatively, a sworn statement or declaration from the Defendants or someone in a position to know the military status of the individual could be accepted. Other factors, such as the age of Defendant if beyond the age for service can be considered. These issues compel the Clerk to deny Plaintiffs' motion.

Accordingly, Plaintiffs' motion is denied. The Plaintiffs may re-file a motion for default when the deficiencies noted have been corrected.

s/ Keith Throckmorton

Keith Throckmorton  
Clerk of Court